RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-02632

 XXXXXXX COUNSEL: NONE

 HEARING DESIRED: NO

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT REQUESTS THAT:

His Under Other Than Honorable Conditions (UOTHC) discharge be upgraded to General (Under Honorable Conditions).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT CONTENDS THAT:

The type of discharge he received may have been excessive, as he believes he was being made an example of at the time of the offense. He believes that having the discharge changed to a General (Under Honorable Conditions) would satisfy justice after 20 years.

In support of his request, the applicant provides a copy of his DD Form 214, *Certificate of Release or Discharge From Active Duty*.

The applicant’s complete submission, with attachment, is at Exhibit A.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATEMENT OF FACTS:

Applicant’s military records indicate he enlisted in the Regular Air Force on 29 Aug 73 as an airman basic (E-1) for a period of four years and served on active duty continuously until his honorable discharge at expiration term of service (ETS) on 27 Oct 80. Following a short break in service, he reenlisted in the Regular Air Force on 2 Jun 81 as a sergeant (E-4) and was progressively promoted to the grade of staff sergeant (E-5) effective and with a date of rank of 1 Apr 84.

On 1 Mar 88, the applicant was notified by his commander of his intent to recommend his involuntary discharge from the Air Force for misconduct-sexual deviation in accordance with AFR 39-10, *Administrative Separation of Airmen*. The specific reasons for the action were that he did, on diverse occasions between Jun 86 and Jun 87, commit indecent acts with his step-daughter, a child under the age of 16.

On 14 Mar 88, the applicant acknowledged receipt of the notification letter, consulted legal counsel, and offered a conditional waiver of his right to an administrative discharge board, contingent upon his receipt of no less than a General (Under Honorable Conditions) discharge.

On 8 Apr 88, the convening authority denied the applicant’s conditional waiver.

On 15 Apr 88, the applicant offered an unconditional waiver of his right to an administrative discharge board, requesting retention under the provisions of probation and rehabilitation or consideration for a General (Under Honorable Conditions) discharge.

On 29 Apr 88, the case was found to be legally sufficient and the discharge authority accepted the applicant’s unconditional waiver, denied his retention under probation and rehabilitation, and ordered his prompt discharge.

On 6 May 88, the applicant was furnished a UOTHC discharge and was credited with 14 years, 1 month, and 4 days of total active service.

Pursuant to the Board’s request, the Federal Bureau of Investigation (FBI) provided a copy of an Investigative Report, which is at Exhibit C.

A copy of the FBI Report of Investigation and a request for post-service information was forwarded to applicant on 25 Sep 09. In response, the applicant provides a short statement and copies of his last four Airman Performance Reports (APR) (Exhibit E).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant’s complete submission in judging the merits of the case; however, we find no evidence of an error or injustice that occurred in the discharge process. Based on the available evidence of record, it appears the applicant’s UOTHC discharge for misconduct-sexual deviation was consistent with the substantive requirements of the discharge regulation and within the commander’s discretionary authority. He has provided no evidence which would lead us to believe the characterization of his service was improper or contrary to the provisions of the governing directive. We considered upgrading the discharge based on clemency; however, we do not find the evidence presented is sufficient to compel us to recommend granting the relief sought on that basis. In view of the foregoing, and in the absence of evidence to the contrary, we conclude that no basis exists to upgrade the applicant’s UOTHC discharge.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following members of the Board considered AFBCMR Docket Number BC-2009-02632 in Executive Session on 18 Nov 09, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

 Exhibit A. DD Form 149, dated 21 Jul 09, w/ atch.

 Exhibit B. Applicant's Master Personnel Records.

 Exhibit C. FBI Report.

 Exhibit D. Letter, AFBCMR, dated 25 Sep 09, w/atch.

 Exhibit E. Letter, Applicant, undated, w/atchs.